



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Mr. William H. Kuntz, Jr.
Administrator
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

OR94-027

Dear Mr. Kuntz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22867.

The Texas Real Estate Commission (the "commission") has received an open records request for information relating to the personnel files of two commission employees. The commission notes that the requestor is neither an employee nor an employee's designated representative. The commission claims that the requested files are excepted from disclosure under section 552.102 of the act. The commission has submitted the requested files for our review.

Section 552.102(a) of the act excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). The common-law right to privacy is violated if: (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

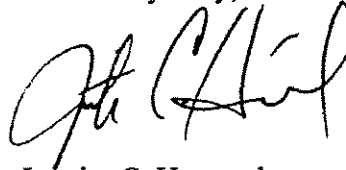
(Tex.--1976), *cert. denied*, 430 U.S. 931 (1977). Actions associated with a person's public employment generally do not constitute that person's private affairs. *See* Open Records Decision No. 470 (1987) at 4.

Upon a review of the documents at issue, it does not appear that the majority of the documents in these files would fall under the personal privacy exception of section 552.102. The only information this office identified as being protected by common-law privacy under section 552.102 of the act is the employees' designation of beneficiaries of their retirement benefits and information about direct deposit, deferred compensation and insurance information. *See* Open Records Decision No. 600 (1992) (copy enclosed).

Further, the commission may withhold the home addresses and telephone numbers of these employees under section 552.117, since these two employees elected to make this information confidential in compliance with section 552.024 (former section 3A) of the act prior to the commission's receipt of the open records request. These files have been marked accordingly for redaction or withholding as indicated.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Juanita C. Hernandez
Special Assistant Attorney General
Open Government Section

JCH/rho

Ref.: ID# 22867

Enclosures: Open Records Decision No. 600 (1992)
Marked documents

cc: Mr. Prescott Caballero
1212 Guadalupe St., #607
Austin, Texas 78701
(w/o enclosures)